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RUEABND/DEA WASHDC PRIORITY
INFO RUCNMUC/EU CANDIDATE STATES COLLECTIVE PRIORITY
RUCNMEU/EU INTEREST COLLECTIVE PRIORITY
RUCNMEM/EU MEMBER STATES COLLECTIVE PRIORITY

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SIPDIS

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AFFAIRS (INL) COUNSELOR JAMES P. MCANULTY FOR REASONS
1.4 (B) AND (D)

INTRODUCTION

11. (U) This is the inaugural edition of "JHA Happenings," a periodical on United States - European Union cooperation on transnational crimes and terrorism, which comprise the Justice and Home Affairs (JHA) portfolio in European Union (EU) circles. We intend for these updates to complement the Mission's spot reports and electronic-mail updates ("USEU Today"). Departments, agencies, and sections at the Mission involved in JHA issues include the Department of Justice (including the Criminal Division, Federal Bureau of Investigation, and Drug Enforcement Administration), the Department of Homeland Security (including Customs and Border Protection), the Department of State (including representatives from International Narcotics and Law Enforcement Affairs, Consular Affairs, Diplomatic Security, Public Diplomacy, and Population, Refugees, and Migration), the Agency for International Development, and the Political and Economic Sections. END INTRODUCTION.

U.S.-EU MUTUAL LEGAL ASSISTANCE AND EXTRADITION
AGREEMENTS

12. (U) The U.S. Senate ratified the U.S.-EU Mutual Legal Assistance (MLA) and Extradition Agreements and related bilateral Agreements and protocols on September 23. The related bilateral instruments were necessary to enable the various Member States with out-dated extradition and MLA agreements with the U.S. to implement the new over-arching ones. On the EU side, to date, 23 Member States have completed their ratification procedures (which vary from country to country in complexity). Four EU Member States, Belgium, Greece, Ireland, and Italy, must complete ratification procedures before these important agreements -- negotiated in the wake of the September 11 attacks -- enter into force.

13. (U) The new U.S.-EU agreements streamline the extradition and legal assistance processes, reducing

formality (e.g., allowing requests to be made electronically or by facsimile), shortening response deadlines, and advocating direct prosecutor-to-prosecutor contact. Notably, the U.S.-EU MLA Agreement will facilitate access by investigators to financial records, authorize requests and responses in administrative (e.g., SEC) as well as criminal proceedings, permit the creation of U.S.-EU Joint Investigative Teams (JITs), and allow for taking of testimony via digital video conference links, among other innovative measures. The U.S.-EU Extradition Agreement modernizes the identification of extraditable offenses by replacing outdated "lists" of offenses contained in many existing bilateral extradition treaties, with the simple notion that what constitutes a serious offense in both jurisdictions is conduct for which extradition may be sought. The new agreement will also put U.S. requests for extradition on equal footing with Member States, European Arrest Warrant (EAW) requests for the same defendant. With the new provision, the U.S. and the EU Member States will have a means of sequencing prosecutions so as to avoid having a prior, lower-level prosecution of a defendant bar ("non bis in edem") a subsequent more serious crime prosecution in another jurisdiction. The new U.S.-EU agreement will also allow for the "temporary extradition" of a defendant convicted and serving a sentence in one jurisdiction to be rendered to a second jurisdiction for prosecution while the witnesses and other proof are still readily available.

SEMINAR ON MUTUAL LEGAL ASSISTANCE AND EXTRADITION AGREEMENTS

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¶4. (U) The United States, the European Commission, and the EU's Judicial Coordination Unit (EUROJUST) plan to co-host a seminar for practitioners in November in The Hague on implementation of the Mutual Legal Assistance and Extradition Agreements. Both agreements contain innovative procedures which require study by prosecutors and police from both the United States and the EU Member States.

RESPONSE TO DIRECTOR GENERAL FAULL ON JUDICIAL REDRESS

¶5. (SBU) Mission delivered the response to Commission Justice, Freedom and Security (JLS) Director General Jonathan Faull during the week of September 15 in answer to his request for an explanation of the availability of judicial redress in U.S. courts for non-U.S. persons alleging violations of their data privacy. The request arose from a misplaced concentration on a single U.S. Law, the Privacy Act of 1974, that limits redress in court to U.S. persons. The entire High Level Contact Group (HLCG) process of the last 18 months has been undertaken because the EU and U.S. have very different but arguably effective privacy regimes. The EU system rests on a single draft Framework Decision implemented by the Member States and the U.S. regime with its multiplicity of overlapping laws, regulations, mechanisms, and doctrines. Singling out one rather old U.S. law mistakenly ignored the entire purpose and process of the HLCG.

¶6. (SBU) The letter response, cleared inter-agency in Washington and Brussels, included a matrix of hypothetical situations and statutory authorizations in which any individual, regardless of nationality, could file a U.S. civil court action seeking redress. At the same time, the response stressed that our focus should not be on "judicial redress," but rather on "effective redress," which many times would not necessarily be obtained through a lengthy court process. The response requested a similar analysis and matrix from the EU side for its data protection system. At the close of the letter, the U.S. requested a prompt in-person U.S.-EU HLCG Experts-Level meeting in Washington.

FOLLOW UP ON HIGH LEVEL CONTACT GROUP

¶7. (C) U.S. and EU officials subsequently agreed to hold an HLCG Experts-Level Meeting (per above) via Digital Video Conference (DVC) during the week of October 17, after Mission followed up informally with Commission, Council Secretariat, and French Presidency colleagues to generate collective interest in a meeting. We also need to ensure that we remain on track with various "action items" in advance of our December Justice and Home Affairs (JHA) Ministerial Meeting in Washington. To date, the French Presidency, confronted by the Russia-Georgia and global financial crises, appears to be focused primarily on migration issues within the JHA portfolio. The U.S. side does not want a lapse in meetings to slow momentum towards negotiation of a binding international agreement to enhance law enforcement information sharing while maintaining appropriate data privacy. We also need to find a solution to avoid any "chilling" of the robust exchange of critical law enforcement and terrorism information in the interim. Earlier, the EU side had suggested waiting until after entry into force of the Treaty of Lisbon to negotiate a long term agreement. The rejection of the Lisbon Treaty in the Irish referendum, however, has made delaying our U.S.-EU negotiations no longer a reasonable option.

TREATY OF LISBON

¶8. (C) Brussels-based print media have carried extensive speculation on possible options to revive the Treaty of Lisbon. (Ireland is the only Member State whose constitution explicitly requires a referendum for approval of a new EU treaty.) Speculation centers on the possibility of

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organizing a second referendum in the autumn of 2009 after EU leaders provide Ireland with written assurances regarding specific treaty provisions that may have contributed to its rejection. Still, many Irish voters reportedly remain opposed to a new vote. For the moment, EU officials seem resigned to the idea that the earliest possible time frame for entry into force of the Treat would be 2010. Accordingly, elections for the new European Parliament will proceed in mid-2009 under the existing EU legal and institutional framework.

VISA WAIVER PROGRAM AND ESTA UPDATES

¶9. (U) The Department of Homeland Security (DHS) is working diligently with countries in the EU and elsewhere seeking to enter the US Visa Waiver Program (VWP) for the first time. In the EU DHS is proceeding upon the agreed-upon "two-track approach." On the "Member State track," implementation arrangements are being developed. The U.S. (Department of Justice and DHS) has recently signed law enforcement information-sharing agreements (Agreements for Enhancing Cooperation in Preventing and Combating Crime) with Estonia, Hungary, and Latvia, which will be relied upon as one part of the implementation arrangements. Consultations have begun on the sharing of terrorist look-out information and, if agreement can be reached, these Homeland Security Presidential Directive (HSPD-6) agreements will comprise a second part of the implementation arrangements. On the "EC track," JLS Commission Director General Faull and French Presidency Representative Laurent Pic were in Washington the week of October 6 to meet with DHS, State, and DOJ officials on VWP, among other topics. As the process to expand the program continues, the regular two-year reviews of participating VWP countries are ongoing.

¶10. (U) DHS reports that the pilot program of the Electronic System of Travel Authority (ESTA), which has been running for several weeks now, is proceeding well. As expected during this voluntary ESTA participation time, only a very negligible percentage of travelers have had their requests denied. Those few unsuccessful applicants were then referred to their nearest consulate to make an in-person application for a visa. DHS has used this voluntary pilot period to identify any glitches in the software and to correct any apparent confusion occasioned by the wording of the questions on the form. The ESTA will become a mandatory procedure in January 2009.

TECHNICAL SEMINAR ON EXPLOSIVES

¶11. (U) As a follow-up to a recommendation adopted at the JHA Ministerial Meeting under the Slovenian Presidency, U.S. and EU officials are organizing a technical seminar or conference for explosives experts. At a preparatory meeting in Brussels on October 1, U.S. and EU officials worked to finalize the agenda, format, and number and level of participants. On the U.S. side, we anticipate that technical experts from DHS, the Federal Bureau of Investigation, the Alcohol, Tobacco, Firearms, and Explosives Bureau, and the State Department's Diplomatic Security Bureau will participate in the technical session, tentatively scheduled for early December.

"THIRD COUNTRY" JHA LUNCHEON

¶12. (U) Mission DCM hosted a luncheon for Justice and Home Affairs (JHA) Counselors from 16 non-EU nations on September 19 at the Brussels Public Diplomacy Regional Hub conference area. Guest speakers, the President of the European Union's Judicial Cooperation Unit (EUROJUST), Jose Luis Lopes da Mota (of Portugal), and the Chairperson of EUROJUST's External Relations Team, Malci Gabrijelcic (of Slovenia), spoke in-depth about EUROJUST's evolving role in fighting organized and transnational crimes. This was the first time in a long time that the Mission hosted this periodic luncheon series. Representatives from the Brussels-based diplomatic missions

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of Canada, Japan, Norway, New Zealand, Australia, Switzerland, Iceland and Mexico have been regular participants at these luncheons. Representative from other countries, including Malaysia, Israel, Singapore, Turkey, and Croatia, joined the group on this occasion. (See Brussels 1500 for more details on the remarks on EUROJUST.)

U.S.-EU TROIKA MEETING ON DRUG ISSUES

¶13. (U) The next meeting of the U.S.-EU Troika meeting on Drug Issues will occur November 14 in Brussels. The U.S. side recently presented a proposed agenda for comment and concurrence by EU colleagues.

U.S.-EU COTER - TWP TROIKA MEETING

¶14. (U) According to a contact at the Council Secretariat, the next U.S.-EU Committee on Terrorism (COTER) - Terrorism Working Party (TWP) Troika meeting is planned in Washington, D.C., for November 20. The two previous COTER Troika meetings were in Brussels and Lisbon.

TERRORIST FINANCING CASES IN THE ECJ

¶15. (SBU) Mission continues to provide a consultative link, when requested, for EU staff and EU Member States on possible EU actions following the decision of the European Court of Justice (ECJ) in the Kadi and al-Barakaat cases. The ECJ found the EU scheme for implementation of the UN sanctions designations for Kadi and Al-Barakaat violative of EU fundamental rights guarantees (for notice, representation by informed counsel, etc.) before property was effectively "taken" as a result of the designation. The EU has three months to correct the identified flaws in its scheme in these two designations. EU officials and legal advisors continue to weigh the possible wider consequences for the EU sanctions implementation program of this ECJ decision and possible determinations in follow-on cases now pending on the court's docket.

WORLD CUSTOMS ORGANIZATION

¶16. (U) The World Customs Organization (WCO) will host a SAFE Working Group meeting in Brussels in October that will focus on supply chain security and Customs risk management protocols, as well as a SECURE Working Group meeting that will continue to refine Customs "best practices" in combating intellectual property rights violations. The Joint Customs Cooperation Committee (JCCC), made up of personnel from Customs and Border Protection and the European Commission's Taxation and Customs Union Directorate General (DG-TAXUD), will hold a technical meeting in Washington, D.C., from November 5 to 6. Cooperation and collaboration continues to be strong between the U.S. and EU on these focal areas.

EU HEADS OF STATE ENDORSE IMMIGRATION AND ASYLUM PACT

¶17. (U) At their October 15 to 16 European Council meeting, EU Heads of State unanimously endorsed the European Pact on Immigration and Asylum as agreed by their Ministers at an earlier JHA Council meeting. The French Presidency designed the Pact to serve as the foundation for a common EU policy in the area and as a reference political document for EU Member States to organize legal immigration, combat illegal immigration, improve the effectiveness of border controls, address asylum, and develop a global partnership with countries of origin and transit by promoting a synergy between immigration and development. French President and European Council Chairperson Nicolas Sarkozy told his concluding Summit press conference that the Pact's endorsement marked the achievement of a major objective of

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the French Presidency for its six-month term in office. Sarkozy said the EU was now "equipped with a true immigration policy." (See Brussels 1587 for more details.)

SILVERBERG

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